IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 20650 of 1993 AND W.P.NO.14822 OF 1995

W.P.NO.20650 OF 1993

Between:

1 J.Yadi Reddy, S/o.Narayan Reddy,
Kothapet Village Saroornagar Mandal
Rangareddy District
2 J.Ram Reddy, S/o.Narayan Reddy,
Kothapet Village, Saroornagar Mandal,
Rangareddy District
3 J.Penta Reddy, S/o.Narayan Reddy,
Kothapet Village, Saroornagar Mandal,
Rangareddy District

..... PETITIONERS

AND

1 The Joint Collector, Rangareddy District at Hyderabad
2 The Revenue Divisional Officer, Hyderabad, East division at Hyderabad
3 The Mandal Revenue Officer, Saroornagar Mandal, Rangareddy Dist
4 B.Konda reddy, Retired Joint Collector of Agriculture,
R/o.Ongole, Prakasam Dist

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or writs, order or direction, declaring and setting aside the order

Dt.21/12/1993 passed in Proc.No.B1/2320/93 on the file of the first respondent and the order Dt.23/03/1993 passed in Proc.No.L/1683/93 on the file of the second respondent as illegal, arbitrary.

Counsel for the Petitioner: MR.K.RAGHUVEER REDDY

Counsel for the Respondents 1 to 3 : GP FOR REVENUE

Counsel for the Respondent no.4: Sri A.Narasimha Reddy

2)WRIT PETITION NO : 14822 of 1995

Between:

1 J.Yadi Reddy, S/o Narayan reddy,
r/o Kothapet (V), Saroornagar Mandal, R.R.Dist.
2 J.Ram Reddy, S/o Narayan Reddy,
r/o Kothapet (V), Saroornagar Mandal, R.R.Dist.
3 J.Penta Reddy, S/o Narayan Reddy,
r/o Kothapet (V), Saroornagar Mandal, R.R.Dist.

..... PETITIONERS

AND

1 The Joint Collector, R.R.Dist., Hyderabad.
2 The Mandal Revenue Officer, Saroornagar Mandal, Saroornagar, R.R.Dist.
3 Shashi Reddy, S/o Rajshekar Reddy,
r/o Renukapur (V), Saroornagar Mandal.
4 Vijayabhaskar Reddy, S/o Rajsekhar Reddy,
r/o Renukapur (V), Saroornagar Mandal.
5 Sudarshan Reddy, r/o Renukapur (V), Saroornagar Mandal.
6 Ramakrishna Reddy, r/o Renukapur (V), Saroornagar Mandal.
7 Konda Reddy, S/o Pattabhiram Reddy,
r/o Ongole, Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a WRIT OF MANDANUS or any other appropriate writ or writs, order or direction, declaring the order dt.21.12.1993 in case No.B1/4716/93 on the file of the respondent, as illegal, arbitrary and without jurisdiction.

Counsel for the Petitioner: MR.K.RAGHUVEER REDDY

Counsel for the Respondents 1 & 2 : GP FOR REVENUE

Counsel for the Respondent no.7: Sri A.Narasimha Reddy

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION Nos. 20650 of 1993 & 14822 of 1995

COMMON ORDER:

Heard Sri K.Raghuveer Reddy, learned counsel for the petitioners and the learned Government Pleader for Revenue appearing on behalf of the respondents 1 to 3 and Sri A.Narasimha Reddy, learned counsel appearing on behalf of the fourth respondent in W.P. No. 20650 of 1993.

The petitioners herein, who are brothers and claiming to the owners and possessors of the lands in survey nos. 8, 9, 10 and 12 admeasuring Ac.5.20 guntas; Ac.0.22 guntas; Ac.1.08 guntas and Ac.1.26 guntas respectively, situated at Renukapuri village, Saroor Nagar mandal in Rangareddy district, filed this Writ Petition, *inter alia,* seeking for a Writ of Mandamus challenging the orders dated 21.12.1993 passed by the first respondent confirming the orders of the second respondent dated 23.03.1993.

The case of the petitioner, in short, is that they had purchased the aforesaid lands through private sale deeds from the earlier owners viz. Ramakrishna Reddy, Adisesha Reddy, Dharma Rao and the fourth respondent herein, and after payment of entire amount of consideration, they have been put in physical possession thereof in the year 1973 and since then they are in absolute possession and enjoyment, which is also duly recorded in the revenue records and as evidenced from the pass book issued in their favour in the year 1978. It is their further case that their possession was recorded in the

possessor column in the pahanis from the year 1973 as purchasers. It was also contended that having regard to such a long possession and the statutory period, the petitioners have perfected their title by prescription also. Thereafter, the petitioners filed an application as contemplated under the provisions of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short, 'the Act'), and the same was ordered after regular enquiry and patta was mutated in their name. However, surprisingly, according to the petitioners, the fourth respondent filed an application before the District Collector concerned on 22.03.1993, of which the petitioners had no intimation at all, and the said application was referred to the second respondent herein, who without conducting any enquiry much less giving any notice to the petitioners, passed the orders on 23.03.1993, unilaterally accepting the case of the fourth respondent and treating the same as regular appeal and giving direction to the third respondent to effect changes inserting his name in the pahani patris for the years 1990-1991 and 1991-1992. Since the petitioners were not made parties thereto, the petitioners had to challenge the same by way of revision under Section 9 of the Act before the first respondent. However, in spite of raising several grounds both on the basis of title and possession and want of proper notice, the first respondent dismissed the same as per orders dated 21.12.1993 on the ground that the fourth respondent is holding the title in pursuance of the registered sale deed and further the petitioners are not found to be in possession. Hence, the Writ PetitionS.

The learned counsel for the petitioners submitted that admittedly the very initiation of the proceedings at a later stage by the fourth respondent by the application dated 22.03.1993 and the orders being passed thereon on 23.03.1993 is without any notice to the petitioners and without even holding any enquiry and therefore, the matter ought to have been reopened by giving an opportunity to the petitioners who claimed their absolute right and title based upon the patta granted under the provisions of the Act and the entries in the revenue records. Further, it is also pointed out that the findings of the first

respondent in the revision holding that the petitioners do not have any title in view of the registered sale deed existing in favour of the fourth respondent and the petitioners are not in possession, can not be accepted.

The learned counsel appearing on behalf of the contesting respondents sought to repel the aforesaid contentions on the ground that the petitioners, in fact, have no legal right or title over the lands in question since they do not hold any registered document in their favour and since the registered document is existing in favour of the respondents, the very proceedings initiated by the petitioners under Section 5(A) of the Act and obtaining orders thereunder is not valid and therefore, both the authorities have rightly upheld the claim of the first respondent which is based on registered sale deed and also possession.

Having considered the submissions made and on perusal of the material, the question which has to be considered in these Writ Petitions is as to whether the impugned proceedings at the instance of the fourth respondent in making challenge to the earlier proceedings in favour of the petitioners, are valid ?

There is no dispute to the fact of the petitioners' claim, their right, title and possession in pursuance of private sale deed and not based upon any registered sale deed from the earlier owners including the fourth respondent herein as aforesaid, in the year 1973 and also issuance of pass book in their favour in the year 1978 and further on the application filed by them under Section 5(A) of the Act, the patta was also given effect to. The petitioners also claim that the entries in regard to the possession stand in their favour whereas the claim of the fourth respondent is based upon a registered sale deed of the year 1965 existing in his favour and he also claims that he is in possession. Admittedly, the alleged sale in favour of the petitioner

was validated under Section 5(A) of the Act by the proceedings dated 19.07.1991. The same has not been challenged by the fourth respondent. However, the respondents have chosen to file an application directly before the District Collector on 22.03.1993 which has been referred to the second respondent, who immediately passed orders on the very next day i.e. on 23.03.1993 with a direction to mutate the entries in favour of the fourth respondent. Admittedly, the petitioners are not parties to the said proceedings and no notice was given to them and even on the basis of it, the said order is not preceded by any enquiry of whatsoever nature, or verification from the third respondent herein. No reason has been given as to why and how the validation proceedings made in favour of the petitioners on 19.07.1991 could be set aside without even giving any opportunity to the them. The revisional authority, at the instance of the petitioners herein, did not find favour with them only on the ground that the petitioners do not hold any registered document in their favour vis-à-vis as held by the fourth respondent. Previously, the revisional authority has given a finding that the petitioners are not in possession. In fact, both the parties herein claimed their possession based upon the entries existing in the revenue records all along. The order of the revisional authority does not disclose as to verification of the entries from the pahanis or other revenue records in regard to possession. Be that as it may, in view of the rival claims as arising between the two parties upon the title, one claim under a private sale deed having perfected their title basing on possession and another on the basis of a regular registered sale deeds in their favour. Both claimed their possession, which is sought to be drawn from the entries existing in the revenue records including the pahanis. These are all matters which require to be considered after giving opportunity to both the sides. Admittedly, the proceedings dated 23.03.1993, apart from being one sided, are without even an enquiry. In fact, the said proceedings were taken up as a regular appeal as contemplated under the Act. In stead of taking up the matter at the appeal stage, it is more desirable that an opportunity should be given to both the sides before the primary authority.

In this connection, it is relevant to note the decision of a Division Bench of this Court in *Sannepalli Nageswar Rao & another V. District Collector, Khammam & others* wherein in the similar circumstances, by taking into consideration the provisions of the Act, it was held that, such an application can not be treated as an appeal and without providing an opportunity to both sides. Therefore, the matter was directed to be taken up by the primary authority rather than disposing off the same at any higher level. Following the same, it is to be held that the entire proceedings since inception are almost one sided without the presence of the other. In the circumstances, the matter requires to be considered afresh on merits.

The Writ Petitions are, accordingly, allowed. Both the impugned orders dated 23.03.1993 of the second respondent and dated 21.12.1993 of the first respondent are set aside and the matter is remitted back to the third respondent for fresh enquiry and disposal after giving opportunity to both the sides in accordance with law. No costs.

(B.Prakash Rao, J.)

07.02.2005

DRK

That Rule Nisi have been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice,

On Monday the Seventh day of February Two thousand and five.

… Registrar

Copy to:

1 The Joint Collector, Rangareddy District at Hyderabad

2 The Revenue Divisional Officer, Hyderabad, East division at

Hyderabad

3 The Mandal Revenue Officer, Saroornagar Mandal, Rangareddy

Dist.

4 Two CCS to the G.P. for Revenue, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

5 Two CD copies.

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION Nos. 20650 of 1993 & 14822 of 1995

07.02.2005